

# ADA & Website Accessibility



<http://bit.ly/WebAccessibility2017>

# Overview

Since 1990 the impact of digital on everyone's lives has increased profoundly

This is especially true for people with disabilities.

Over 22 million have vision loss.

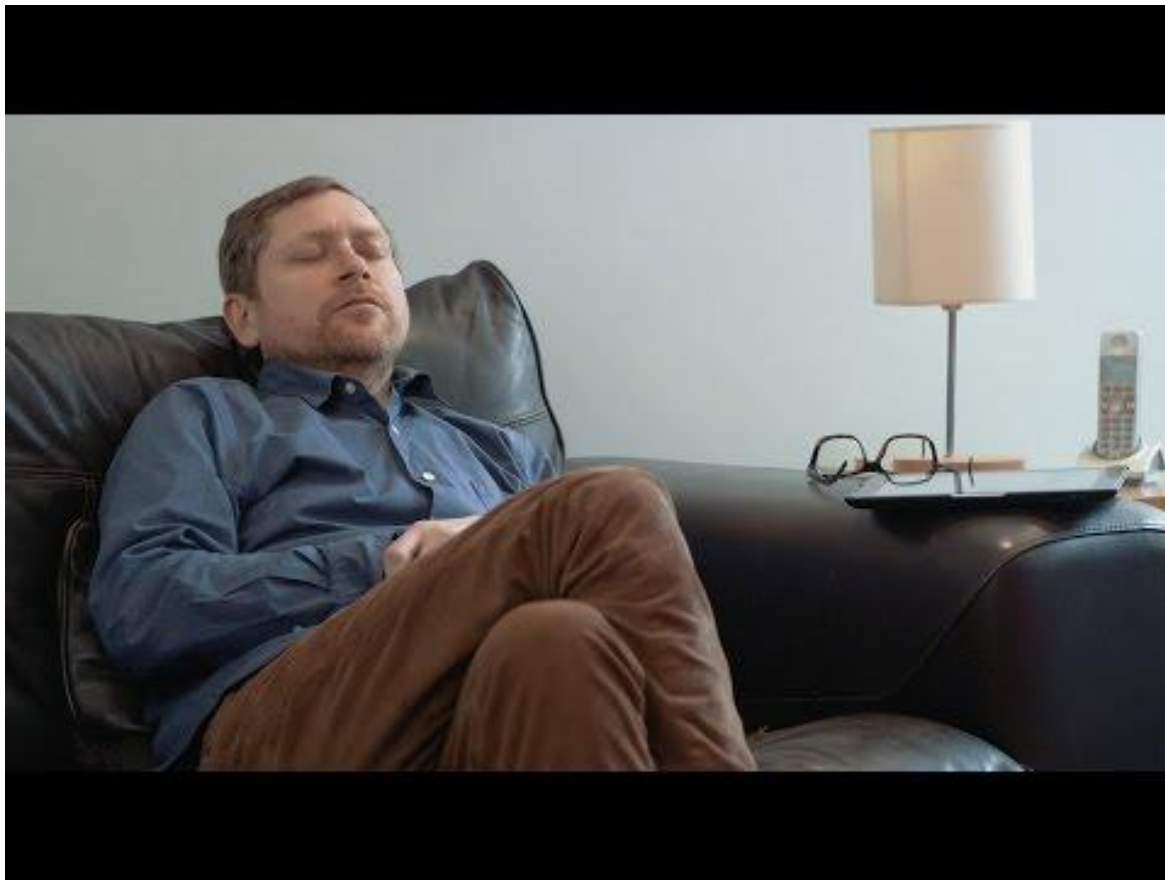
These are potential customers.

# ADA TITLE III

- The Americans with Disabilities Act was passed in 1990.
- Title III relates to **“public accommodations”** - including hotels, restaurants, bars, theaters, grocery stores, hardware stores, dry-cleaners, professional offices, banks, hospitals, museums, libraries, and so on....
- All new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if it is readily achievable.
- Created LOTS of enforcement actions and lawsuits, for decades - by the EEOC, advocacy groups, and individuals.
- Implementation of requirements was very expensive.

# Title III in the Digital World

- The wave of physical barrier enforcement has waned...
- And has been replaced by WEBSITE accessibility enforcement
- The same businesses are still public accommodations, and their websites are one of the services offered to the public.
- Under the ADA, a place of public accommodation must provide an individual with a disability a full and equal opportunity to enjoy the services provided by the business.
- Including websites.



Kristina Brines : Paul Frank + Collins

Dave Gibson : Propeller Media Works

# Impairments & Assistive Technologies

- Visual Impairments: Screen Readers and Magnifiers
- Physical Impairment: Voice-driven navigation, MouseKeys (use numeric keypad for cursor), HeadPointers worn on head to direct cursor
- Hearing Impairment: Closed Captioning for videos

# The Issue At Hand

- ADA adopted in 1990—*before* websites were around
  - “[W]e were not communicating by e-mail, blog, or tweet; we were not filling virtual shopping carts with clothes, books, music, and food; we weren’t banking, renewing our driver’s licenses, paying taxes or registering for and taking classes online. Congress could not have foreseen these advances in technology.” *Achieving the Promises of the Americans with Disabilities Act in the Digital AGE - Current Issues, Challenges and Opportunities: Hearing before the H. Subcomm. On the Constitution, Civil Rights, and Civil Liberties of the House Comm. on the Judiciary*, 111th Cong., 2d Sess. 111095 (2010).
- Courts have looked at the purposes of the statute to say (in many cases) that discrimination against individuals with disabilities is equally prohibited in an online sale as it is in a store.

# What Types of Businesses?

- Are all businesses with websites subject to this problem?
- We don't know!
- Some courts have said that Title III only applies to physical places or somewhere with a sufficient nexus to a physical place.
- Others have said that Title III applies in the absence of any connection to a physical place - as long as any good or service is offered to the public. THIS IS THE CURRENT RULE IN VERMONT.
- Applies to small and large businesses alike.



# Where is the risk coming from?

- Plaintiffs' attorneys select a disabled person to bring suit, or a local disability rights organization.
- DOJ or Attorney General's Office
- OR demand letters sent by law firms with no specific plaintiff or disabled individual connected to the demand.

# The New ADA Troll Business Model

- “Demand Letter” versus actual lawsuit
- No need to physically visit business to test compliance
- Automated testing
- Generate Cut-and-Paste “Demand Letters”
- Model is simple to understand and replicate



# What Can Happen?

If a lawsuit is filed:

- Provides only injunctive relief – NOT compensatory damages
- Plaintiff's Attorneys can recover ***ATTORNEYS FEES!***

If you receive a demand letter:

- Potential responses
- Best defenses: Web Accessibility Statement & make website compliant

# Other Potential ADA Website Issues

## Employment Applications

- Title I of the ADA prohibits employers with 15 or more employees from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.
- Applies to information regarding job vacancies, job application processes, and any testing procedures
- Can provide reasonable accommodations to individuals to make these processes accessible.
- Remedies for violations: hiring, reinstatement, back pay, court orders to stop discrimination, and reasonable accommodation. Compensatory damages may be awarded for actual monetary losses and for future monetary losses, mental anguish, and inconvenience. Punitive damages may be available as well, if an employer acts with malice or reckless indifference. Attorney's fees may also be awarded.

# “Compliance Standards”

- Currently NO governmental standards or regulations for ADA website accessibility
- DOJ proposed rules in 2010, but regulations on ADA websites not expected until 2018, repeatedly delayed
- Web Content Accessibility Guidelines (WCAG 2.0), adopted in 2008, accepted by Europe, Great Britain, Australia for standards; **DOJ uses WCAG 2.0 for settlement purposes with businesses**
- **WCAG - Web Content Accessibility Guideline - de facto standard**

# WCAG 2.0

Web Content Accessibility Guideline by the World Wide Web Consortium (W3C)

It's a **GUIDELINE** - so it's not a black and white standard.

1. **Perceivable** - Information and components presentable in ways that all users can perceive.
2. **Operable** - Components and navigation must be universally operable.
3. **Understandable** - Information and operation of user interface must make sense.
4. **Robust** - Content and components must be interpretable by wide range of assistive technologies.

3 levels: A, AA, AAA

# Typical Issues

- Labeling (image ALT tags)
- Image Maps
- Missing form labels
- Form markup
- Sequential page structure: use of heading tags (H1, H2, H3...)
- Third Party Systems, Widgets, etc
- Contrast
- Use of color as only indicator of function
- Interactive functions (like drag & drop)

# Increasing Accessibility & Avoiding Litigation

4 Basic Steps

Establish a Plan

Website Audit

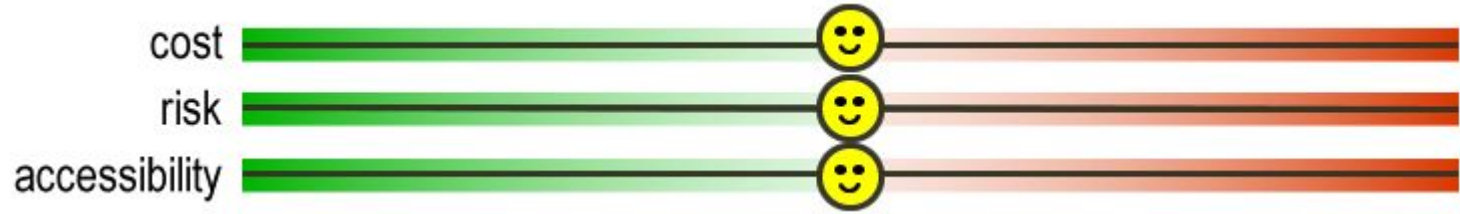
Website Remediation & Training

Scheduled Audits



# Approach depends upon your profile

Based on how you approach cost, risk, and the degree of accessibility you want, will determine the approach you take.



# Profile 1: Minimum Cost

Accessibility is important to us...

But, we don't have budget for this...

What can we do to lower risk of legal issues?



# Minimal Cost Solutions

- DIY: Understand the basics - visit [accessibility.works](https://accessibility.works)
- **Add a Web Accessibility Statement to footer of website.** [Example](#)
- Set up a 24-7 800 phone service that can provide vision impaired callers with all information and access provided by website.
- Use a low-cost auditing tool that provides reporting
- Address CMS issues such as image alt-tags internally.
- Prioritize the rest (A vs AA) and have your web developer address those on a cost basis.
- Document everything you do.

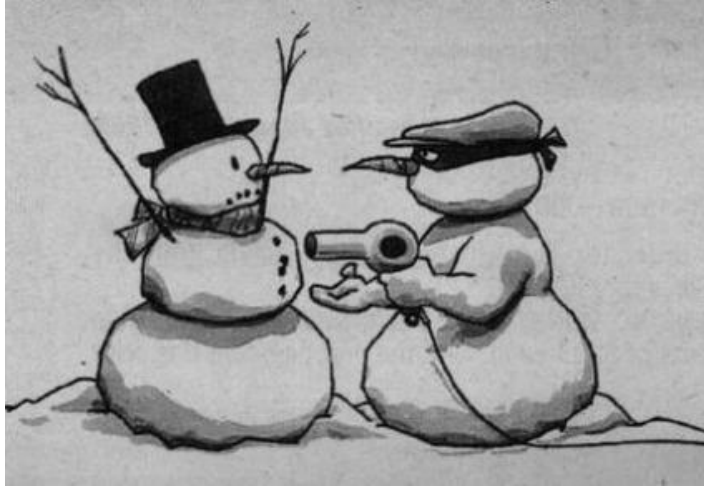
# Profile 2: Minimum Risk

Accessibility is important to us...

And, we would rather spend more now than a lot later

So how do we make our site accessible and eliminate legal risks?



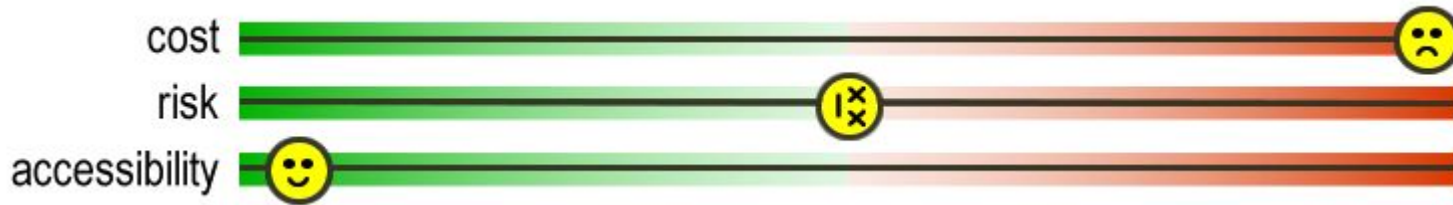


## Profile 3: Reactive

Crap.

Too late.

We got hit.



# Best Practice Solutions

1. Consult with experts - legal & website accessibility
2. Review insurance policies
3. Select an internal web accessibility owner
4. Establish a plan for testing & remediation
5. Publish a web accessibility statement
6. Set up a 24-7 800 service while remediating
7. Collaborate with your website development partner
8. Audit website based on WCAG 2.0 AA
9. Remediate website
10. Train website contributors
11. Run scheduled audits

# WCAG Auditing & Reporting

## ① Automated

- Catches 20-25% of issues
- Same tools used by trolls
- Difference between page validators and auditors

## ② Manual

- Developer code review
- No mouse, keyboard testing

## ③ Assistive Technology

- Screen readers and other assistive tools are used to test the website

# Automated Testing & Auditing Tools

- Accessibility Management Platform (AMP) by SSB Bart Group
- WordSpace by Deque (pronounced D-Q)
- Tenon.io : ADA Compliance Auditor : Monthly rates as low as \$19/mo
- SortSite Accessibility Validator by Power Mapper : Cloud Version (\$49/mo/user)
- Wave : ADA Compliance Validator - Free page tester
- Colour Contrast Analyser (yes, its spelled that way)

Find more about these and updates at [accessibility.works/resources](https://accessibility.works/resources)



# The Reporting is Key

Reporting that integrates with workflow (spreadsheet).

Documentation is a key tool for defense.

Free and low-cost automated solutions lack reporting.

Reporting that not just identifies issue but provides solutions is key value.

# Website Remediation Process

- Remember, your web developer is your partner in this process.
  - Does your developer need to be an expert?  
Depends on whether you have a consultant to guide or not.
- Many issues can be addressed via CMS
- 3rd Parties



# Costs



	Min Cost	Min Risk	Reactive to Suit or DL
Audit	\$5-\$10K	\$10-\$20K	\$15-\$30K
Remediation	\$4-\$10K	\$10-\$20K	\$15-\$30K

Plus Settlement and Attorneys Costs

# Silver Linings

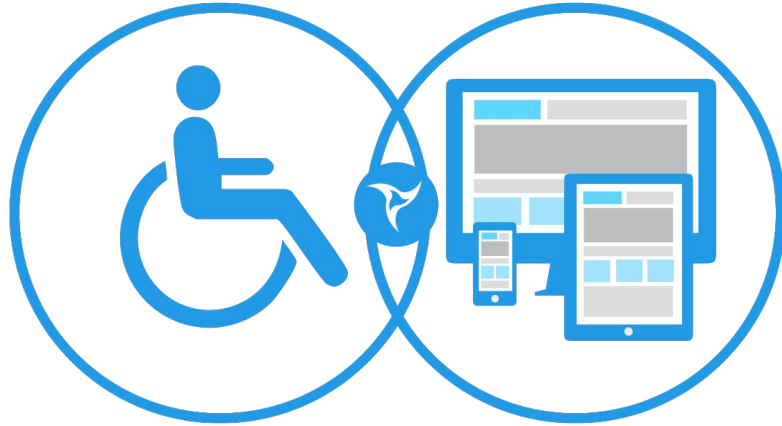
1 in 5 Americans has a disability and over 22 million have vision loss.

Good Accessibility = Good Usability for All

Good Accessibility = Good SEO

**Digital ADA Remediation is MUCH cheaper than Physical**

# Thank You



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